Aug 85-H

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed Suspension of the Package Store (PS) License held by:	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Stanley R., Gladys L. and William F. Church dba CHURCH'S MAR[redacted] 2008 S Holladay Drive Seaside, Oregon 97138	)	OLCC-85-V-021
Clatsop County	)	

A hearing in this matter was held on May 23, 1985, in Seaside, Oregon, before Hearings Examiner Jill Thompson. The Licensees appeared and were not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner considered the record of the hearing and the applicable law, and issued a Proposed Order dated July 9, 1985.

No Exceptions to the Proposed Order were filed within the 15 day period specified in OAR 845-03-050.

The Commission adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Stanley, Gladys and William Church held a Package Store (PS) license at all times relevant to the facts herein.

2. OLCC staff has charged Licensees with violation of ORS 471.315(1)(g) (sold to minor) or, alternatively, ORS

471.410(2) (made available to a minor), and ORS 471.130(1) (failed to check identification). The staff has proposed a penalty of seven days suspension or a $455 fine.

3. Licensees stipulated to Findings of Fact 4 through 6.

4. On March 29, 1985, Licensees' clerk, Joseph Church, sold three cases of beer to [redacted]. Church did not request identification or take a Statement of Age form from [redacted].

5. Hayes's date of birth is June 24, 1967; at the time of the sale he was 17 years old, and appeared to be 17 or 18.

6. Licensees were not on the premises at the time of the sale.

7. At the time of the hearing of these charges [redacted] appeared to be no more than 19 years old. His appearance was not markedly different than it was at the time of the sale.

8. [redacted] has been refused service at other premises more than 20 times due to his appearance and lack of identification.

9. Licensees have been licensed at the premises since February 1983, and have committed no previous violations.

DISCUSSION

Licensee William Church appeared on behalf of all Licensees; however, he did not offer any explanation or statement of mitigating facts other than that appearing in the staff's violation report. The report states that Licensees' clerk (William Church's son) had been working at the store only about

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two weeks, and had been left alone in the store only once before.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe any of the following to be true:

(1) That the licensee:

. . . . .

(g) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale. ORS 471.315(1)(g).

Licensees' clerk, Joseph Church, sold beer, an alcoholic liquor to [redacted], a minor. [redacted] youthful appearance provided reasonable ground to believe he was under 21 years of age. Plaid Pantries, Inc. v. OLCC, 16 Or App 199 (1974).[1]

2. All licensees and permittees of the commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued to the person under ORS 482.900. However, if the person has no motor vehicle operator's

[1] Because of the disposition of this charge, it is unnecessary to discuss the charge made under ORS 471.410(2).

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> license or an identification card, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. ORS 471.130(1).

Licensees' clerk, Joseph Church, sold beer, an alcoholic liquor, to [redacted], a minor, without requiring identification or taking a Statement of Age form. [redacted] youthful appearance provided reasonable doubt that he had reached 21 years of age.

ULTIMATE CONCLUSIONS OF LAW

> Each licensee may be held responsible for violation of any liquor control law or administrative rule or regulation of the Commission affecting his license privileges and for any act or omission of his servant, agent, employe or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges. OAR 845-06-025.

Licensees' clerk violated ORS 471.315(1)(g) (sale to minor) and ORS 471.130(1) (failure to check identification or take Statement of Age form). Licensees are responsible for their employees' violations.

Although the clerk's lack of experience may have led to the violation, it is not mitigating. Licensees are responsible for adequately training their employee, particularly when the employee is unsupervised.

FINAL ORDER

The Commission orders that the Package Store (PS) license held by Stanley R., Gladys L. and William F. Church at Church's

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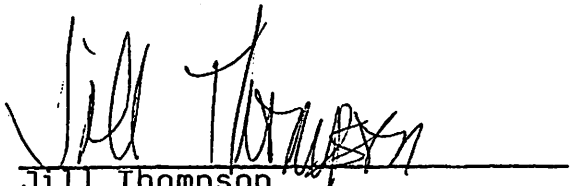
Market, 2008 S Holladay Drive, Seaside, Oregon, be SUSPENDED for 7 days or that Licensees pay a $455 fine in lieu of suspension.

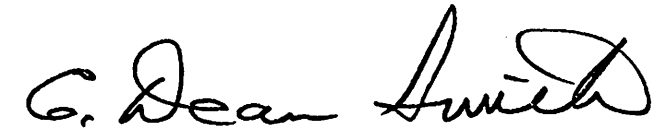
It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

If you choose to pay the fine it must be paid within 10 days of the date of this Order, otherwise the suspension must be served.

Dated this 5th day of August, 1985.



Jill Thompson
Hearings Examiner
Hearings Division



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.